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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

**Stanley H. Kremen,
Attorney at Law
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East Brunswick, New Jersey 08816
(732) 593-7294
Attorney for the Plaintiff**

TRUTEK CORP.,
Plaintiff,

v.

BlueWillow Biologics, Inc.
ROBIN ROE 1 through 10, gender
neutral fictitious names, and ABC
CORPORATION 1 through 10 (fictitious
names).

Defendants.

CIVIL ACTION No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

PARTIES

1. Plaintiff, TRUTEK CORP. ("TRUTEK") is a corporation of the State of New Jersey, with principal offices at 281 East Main Street, Somerville, New Jersey, 08876.
2. Upon information and belief, Defendant, BlueWillow Biologics, Inc. ("BLUEWILLOW") is a corporation of the State of Delaware, with a place of business at 2311 Green Road, Suite A, Ann Arbor, Michigan 48105.

FEDERAL SUBJECT MATTER JURISDICTION

3. The subject matter jurisdiction of this Court arises under 28 U.S.C. § 1331 concerning a federal question, the Patent Laws of the United States, 28 U.S.C. §§ 1338(a), (b), and 35 U.S.C. § 271.

IN PERSONAM JURISDICTION

4. The *in personam* jurisdiction of this Court over Defendant BLUEWILLOW is proper under 28 U.S.C. § 1400(b) because the tort of patent infringement occurred in Michigan and BLUEWILLOW has an established place of business in Michigan.

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VENUE

5. The venue of this Court is proper under the Patent Venue Statute, 28 U.S.C. § 1400(b) since the tort of patent infringement occurred within the State of Michigan, and Defendant BLUEWILLOW has an established place of business thereat, and which is furthermore located within the venue of the Eastern District of Michigan.

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STATEMENT OF FACTS AND CAUSES OF ACTION

6. Ashok Wahi ("WAHI") is President of Plaintiff TRUTEK.

7. On November 21, 1995, United States Patent No. 5,468,488 (hereinafter the '488 Patent) was issued to WAHI for his invention titled, "Electrostatically Charged Nasal Application Product and Method." The '488 Patent was assigned to TRUTEK.

8. On October 7, 1997, United States Patent No. 5,674,481 (hereinafter the '481 Patent) was issued to WAHI for his invention titled, "Electrostatically Charged Nasal Topical Application Product." The '481 Patent was assigned to TRUTEK.

9. On January 18, 2005, United States Patent No. 6,844,005 (hereinafter the '005 Patent) was issued to WAHI for his invention titled, "Electrostatically Charged Nasal Application Product With Increased Strength." The '005 Patent was assigned to TRUTEK.

10. On April 24, 2012, United States Patent No. 8,163,802 (hereinafter the '802 Patent) was issued to WAHI for his invention titled, "Electrostatically Charged

Multi-Acting Nasal Application Product, and Method," on a patent application that was filed at the United States Patent and Trademark Office (USPTO) on May 16, 2009. The '802 Patent was assigned to TRUTEK. The '802 Patent is attached hereto as Exhibit 6.

11. The patented technology made it possible for people to apply TRUTEK's manufactured products in and around their nasal passages to reduce reactions to airborne allergens and to reduce or eliminate reactions to viral infections from influenza and the common cold by restricting and inactivating virus sized particles. This is done by establishing an electrostatic charge in and around nasal passages.

12. As of the year 1992 going forward, TRUTEK utilized its patented and proprietary trade secret technology to establish proof of concept, develop, formulate, manufacture, sell, and/or license over-the-counter products under the brand name NasalGuard® AllergieBlock®, NasalGuard Cold&Flu Block®, NasalGuard® Multi Acting™, Anti-Stat Enhanced Mask™, NasalGuard Wipes™, NasalGuard Allergie Wipes™, NasalGuard Cold & Flu Wipes™, Skin and Hair super conditioners, Truteks® Skin and Truteks® skin care products, along with electrostatically charged nasal multipurpose products, nasal application (anti-stat) diagnostic products and, associated Technologies and Methodologies, Patents and Pending Patent Applications, also including products under the brand names Chloraseptic Allergen Block and Little Allergies Allergen Block, Eisai Crystal Veil, Eisai Crystal Veil Cool, Nitto Nuru Mask, Nitto NasalGuard, further including but not limited to nasal application product lines such as gels, pre-moistened products for e.g. applicators, swabs, wipes, etc., sticks, nasal sprays, nasal washes, surgical masks, and multi-acting/integrated products.

13. Claim 1 of the '802 Patent claims a method of applying a formulation to the skin or tissue of a person's nasal passages in a thin film. The formulation attracts and holds particulate matter to the thin film, and binds it to the thin film. The bound

1 particulate matter is then inactivated by at least one ingredient that renders it
2 harmless. One such claimed inactivating ingredient is benzalkonium chloride
3 (claim 7). This process is sometimes referred to as "catch, hold, and kill."

4 14. According to information and belief, sometime in 2020, Defendant BLUEWILLOW
5 manufactured and marketed one or more over-the-counter pharmaceutical
6 products named NanoBio[®] Protect ("NANO BIO"). According to information and
7 belief, the NANO BIO products were sold over-the-counter at least at CVS
8 pharmacies nationwide, and were sold online to customers by Amazon.com.

9 15. BLUEWILLOW's website advertises the NANO BIO product being applied to a
10 customer's nasal passages. Their product forms positively charged "NanoBio
11 Droplets" that are approximately 600 nanometers¹ in size, which adhere to nasal
12 membranes. Most harmful particles, such as bacteria or viruses (referred to as
13 "germs"), are negatively charged. The positively charged "NanoBio Droplets"
14 attract and bind to these particles. The NANO BIO product formulation contains
15 benzalkonium chloride (which the website calls BZK) that adheres to the surface
16 of the "NanoBio droplets." According to the website, the "NanoBio droplets"
17 surround the germs and "kill them via membrane disruption." (See Exhibit 1
18 attached hereto.) The NANO BIO product implements the methodology of "catch,
19 hold, and kill." The NANO BIO website "Frequently Asked Questions" section
20 (Exhibit 2) describing the product further enforces this mechanism of action.

21 16. Sometime in 2020, WAHI suspected that the NANO BIO product infringes one or
22 more of TRUTEK's patents. To that end, on June 23, 2020, TRUTEK personnel
23 purchased the NANO BIO product from Amazon.com. After extensive in-house
24 experimentation, it was indicated that the NANO BIO product functions by
25 producing an electrostatic charge in and around the user's nasal passages. It
26 was indicated that NANO BIO product infringes claims of TRUTEK's '802 Patent.
27 On January 14, 2021, TRUTEK personnel purchased a NANO BIO product from

28 ¹ A nanometer is a billionth of a meter.

1 CVS, and obtained similar results through in-house experimentation.

2 17. To validate TRUTEK's in-house experimental results, TRUTEK contracted with
3 Alexai Ermakov, Ph.D. to compare the electrostatic charges between
4 BLUEWILLOW's NANOBIO product and TRUTEK's NasalGuard® products. His
5 experiments showed not only that the NANOBIO product exhibited a surface
6 electrostatic charge, but also that the orders of magnitude of the charges of the
7 BLUEWILLOW and TRUTEK products were of the same order of magnitude. Dr.
8 Ermakov's Report is attached hereto as Exhibit 3. For further verification,
9 TRUTEK contracted with Electro-Tech Systems ("ETS") in Perkasié,
10 Pennsylvania, to run additional experiments. ETS personnel applied
11 BLUEWILLOW's NANOBIO product and TRUTEK's NasalGuard® product to pig
12 skin swatches. Pig skin is very similar to human skin tissue. The ETS and
13 Ermakov experiments yielded similar results. The NANOBIO product exhibited a
14 surface electrostatic charge of the same order of magnitude as the NasalGuard®
15 product. The ETS report is attached hereto as Exhibit 4.

16 18. On January 31, 2021, Keith Altman, a resident of the State of Michigan, ordered
17 and paid for one unit of NanoBio Protect Nasal Antiseptic online from
18 Amazon.com. The product was to be shipped by Amazon.com to his address in
19 Michigan. Mr. Altman used his computer to place the order, and the computer is
20 located in Michigan, and it was located therein at the time that he placed his
21 order. On February 1, 2021, Mr. Altman received the ordered one unit of NanoBio
22 Protect Nasal Antiseptic in Michigan at the designated Michigan shipping address.
23 A declaration of Keith Altman attesting to these events is attached hereto as
24 Exhibit 5.

25 19. The ability to lessen the reactions to airborne contaminants by creating an
26 electrostatic charge around a person's nasal passages was disclosed in
27 TRUTEK's '488, '481, '005, and '802 Patents. A copy of the '802 Patent is
28 attached hereto as Exhibit 6.

1 20. The ability to lessen the reactions to airborne contaminants by creating an
2 electrostatic charge around a person's nasal passages is inherent in TRUTEK's
3 formulations and manufacturing processes. Efficacy studies show that TRUTEK's
4 methodology presented a viable solution to relief of allergy, cold, and flu
5 symptoms.

6 21. Upon information and belief, just as TRUTEK's products work on allergens and
7 viruses by creating an electrostatic charge around nasal passages and further
8 inactivate said allergens and viruses, the NANOBIO products work the same way.

9 22. The NANOBIO products are sold to customers by Amazon.com as are TRUTEK's
10 competing products also sold thereby. The competitive sales of the competing
11 NANOBIO products deprive TRUTEK of sales and profits from its own products.

12 23. Upon information and belief, Defendants Robin Roe 1 through 10 and ABC
13 Corporations 1 through 10 also infringe on the claims of TRUTEK's '802 Patent.

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15 **GENERAL ALLEGATIONS**

16 24. Plaintiff incorporates all of the above Paragraphs *supra* as though fully restated
17 herein.

18 25. Plaintiff owns intellectual property related to certain formulations based upon
19 attracting and/or repelling electrostatically charged particles in and around a
20 person's nasal passages by application of a product that maintains an
21 electrostatic charge on the skin or mucous membranes. Plaintiff has expended
22 considerable resources to inventing, formulating, and developing its inventions
23 and products and to protecting its rights therein. Plaintiff holds all rights, title, and
24 interest to its '488, '481, '005, and '802 Patents. The '802 Patent is in full force
25 and effect. TRUTEK is the legal owner of the '802 Patent and possesses all
26 rights of recovery under the patent.

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COUNT 1

Infringement of the '802 Patent

26. Plaintiff incorporates all of the above Paragraphs *supra* as though fully restated herein.
27. Plaintiff owns intellectual property relating to an electrostatically charged multi-acting nasal application product and method covered by the '802 patent.
28. Defendants distribute, make, use, offer to sell and/or sell infringing products, *i.e.*, the NANO BIO products.
29. Defendants distribute, make, use, offer to sell and/or sell infringing products, *i.e.*, the NANO BIO products, which infringe on the '802 Patent, without authority or license from Plaintiff.
30. Defendants infringe at least claims 1, 2, and 7 of the '802 Patent because the NANO BIO products possess an electrostatic charge when applied to a person's nasal passages, and they use benzalkonium chloride as a biocide.
31. Plaintiff has been damaged as a result of Defendants' infringement of the '802 Patent, and will continue to be damaged unless such infringement is enjoined by this Court pursuant to 35 U.S.C. § 283.
32. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages adequate to compensate in an amount not less than a fair and reasonable royalty.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays that:

1. Defendants be required to pay over and account to Plaintiff for all gains, profits, and advantages derived from the infringement of its '802 Patent beginning April 24, 2012, based upon manufacture, sales, and/or use of the NANO BIO products in the United States and anywhere in the world, or by way of international commerce with the United States.
2. Defendants be enjoined from manufacturing and/or selling the NANO BIO products in the United States, either directly or indirectly.

3. Defendants be enjoined from actively inducing others to sell the NANO BIO products in the United States, either directly or indirectly.

4. Defendants be enjoined from exporting the NANO BIO products from the United States, either directly or indirectly.

5. Plaintiff prays for such other and further relief as the Court may deem to be just and proper.

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DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to Defendants' discovery obligations, demand is made that all Defendants disclose to the Plaintiff whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the judgment and provide Plaintiff with true copies of those insurance agreements or policies, including, but not limited to, any and all declarations sheets. This demand shall include and cover not only primary coverage, but also any and all excess, catastrophe and umbrella policies.

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DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Dated: February 9, 2021

s/ Stanley H. Kremen
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